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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

E. JEAN CARROLL

Plaintiff

v.

22 Civ. 10016 (LAK)
Conference

DONALD J. TRUMP

Defendant

New York, N.Y.
February 7, 2023
11:00 A.M.

Before:

HON. LEWIS A. KAPLAN

District Judge

APPEARANCES

KAPLAN HECKER & FINK LLP
Attorneys for Plaintiff
ROBERTA ANN KAPLAN
SHAWN GIOVJIAN CROWLEY
HELEN ANDREWS
TREVOR MORRISON

TACOPINA SEIGEL & DeOREO
Attorneys for Defendant
JOSEPH TACOPINA
CHAD DEREK SEIGEL
MATTHEW G. DeOREO

HABBA MADAIO & ASSOCIATES LLP
Attorneys for Defendant
ALINA HABBA
MICHAEL MADAIO

N27QcarC

(In open court; case called)

DEPUTY CLERK: Counsel for plaintiff, are you ready?
Can you please put your appearances on the record.

MS. KAPLAN: We are. Roberta Kaplan from Kaplan
Hecker. I'm here with my partner Shawn Crowley, my colleague
Trevor Morrison, and my other colleague Helen Andrews.

DEPUTY CLERK: Counsel for defendant, are you ready?

MR. TACOPINA: Yes. Good morning, your Honor.

THE COURT: Good morning.

MR. TACOPINA: Joseph Tacopina for Donald Trump, along
with my partners Chad Seigel and Matthew DeOreo seated directly
to my right. Good morning, your Honor.

MS. HABBA: Good morning, your Honor Alina Habba and
Michael Madaio also for Donald Trump.

THE COURT: Good morning.

Well, Ms. Habba, I had a rather delphic letter from
you last week saying several unspecified scheduling issues had
arisen, and you wanted to raise them. So tell me what they are
please.

MS. HABBA: Yes, your Honor. Most of them we -- I'm
going to actually have Mr. Tacopina raise, if that's okay with
you, as he is going to be handling some of these issues himself
in terms of scheduling.

But there's a general question and concern, frankly,
with having Carroll I and Carroll II having separate dates and

N27QcarC

1 general questions on how that would work given that they're the
2 same set of facts.

3 THE COURT: Mr. Tacopina.

4 MR. TACOPINA: Thank you very much, your Honor.

5 Your Honor, I trust you also received our letter dated
6 yesterday, February 6, outlining I guess basically --

7 THE COURT: No.

8 MR. TACOPINA: No. Okay.

9 Can we hand one up to the Court, your Honor? I'm
10 going to talk to you about it anyway. It was hand delivered at
11 4:00 p.m.

12 THE COURT: Where and to whom was it hand delivered?

13 MR. TACOPINA: Your Honor, I can't speak to who. We
14 had a messenger from our office bring it to the Court and
15 deliver it. Was it filed also electronically? I'm going to
16 hand you up the letter your Honor.

17 THE COURT: I appreciate that.

18 MR. TACOPINA: I'm sorry, your Honor.

19 THE COURT: But since the pandemic, we don't have mail
20 delivery within the court. We have to send staff to get mail,
21 and we don't do it every hour. Okay.

22 MR. TACOPINA: Could I hand this up?

23 THE COURT: Sure, you can.

24 MR. TACOPINA: I know co-counsel has it, your Honor.
25 But if you don't mind, could I use the podium, by the way?

N27QcarC

1 THE COURT: I'd prefer it.

2 MR. TACOPINA: Your Honor, there are scheduling issues
3 I'd like to address. Would the Court want a minute to peruse
4 the letter or do you want me to plow ahead?

5 THE COURT: I think it might be a good idea if I read
6 the letter.

7 MR. TACOPINA: Why don't I sit down for five minutes.

8 THE COURT: I'm only up to the first sentence of the
9 second paragraph, but right away let me tell you all that I've
10 had enough of the personal accusations between and among
11 lawyers, and I don't want to see any more. I thought I made
12 that clear in the past.

13 All right. Go head, Mr. Tacopina.

14 MR. TACOPINA: Thank you very much, your Honor.

15 THE COURT: Does this, by the way, respond to some
16 writing or writings that I haven't been provided with? Because
17 it quotes from them.

18 MS. HABBA: Yes.

19 MR. TACOPINA: Maybe Ms. Kaplan -- I think Ms. Kaplan
20 submitted a letter as well that maybe you didn't receive also.

21 MS. KAPLAN: I apologize your Honor we thought you
22 received it. We submitted a letter on February 6 that we
23 thought we had delivered to chambers.

24 MR. TACOPINA: It's all right if you only read mine,
25 your Honor. There's no need to read both.

N27QcarC

1 THE COURT: I'm sure Ms. Kaplan feels I only need to
2 read hers, and not yours.

3 MS. KAPLAN: I'm not going to comment, your Honor.

4 THE COURT: Okay, Mr. Tacopina.

5 MR. TACOPINA: Thank you, your Honor.

6 At the outset, let me just say Andrew informed us
7 going forward we will email Andrew when we're delivering
8 something by mail. I think both sides will do that as well to
9 make sure you got it.

10 At the outset, I want to ensure the Court that we have
11 not come into this case looking to delay it just for dilatory
12 reasons. We want to proceed to trial as quickly as possible to
13 put this behind our client.

14 I was brought into this case, my firm was brought into
15 this case to try it, and that's what I will do. I intend to
16 try it as quickly as possible. We were just retained, your
17 Honor, January -- one week ago.

18 THE COURT: Is Ms. Habba going to stay in the case or
19 not?

20 MR. TACOPINA: Yes, your Honor.

21 THE COURT: Go ahead.

22 MR. TACOPINA: In fact, we were retained January 31,
23 one week ago. On that same day, that we filed our notices of
24 appearances. We appeared at a deposition of the plaintiff on
25 the same day we were retained. That being said, in order to

N27QcarC

1 sufficiently prepare for trial, we do need several items to be
2 brought to the Court's attention bearing on that timing. Most
3 importantly, the scheduling order that was entered on
4 December 21 set yesterday, February 6, as the deadline for
5 completion of expert discovery. However, before we entered the
6 case, your Honor, our co-counsel, Ms. Habba's firm, experienced
7 some substantial difficulties retaining someone, an expert to
8 conduct the IME.

9 By way of background, pursuant to your scheduling
10 order of December 21, co-counsel -- when I say co-counsel,
11 Ms. Habba's firm -- immediately contacted potential experts for
12 the purposes of performing that IME and issuing an expert
13 report. Quite frankly, unfortunately, due to the unique nature
14 of this case and the incredibly expedited schedule, it was
15 substantially difficult for them to secure a --

16 THE COURT: No, it is not incredibly expedited.

17 MR. TACOPINA: Okay.

18 THE COURT: It is not. *United States v. Microsoft*, a
19 case of some moment went to trial within five months of the
20 filing of the complaint.

21 MR. TACOPINA: Okay, your Honor.

22 So to revert back to at least -- it was -- at least
23 the timing was expedited for some of the experts' availability,
24 but I understand what you're saying. And, again, I don't
25 quarrel with that at all. But, anyway, it was difficult for

N27QcarC

1 them to find an expert willing to assist very quickly.

2 Nonetheless, they conferred with an expert referral
3 service and ultimately were able to retain the services of
4 Edgar Nace on January 9, and right after the holidays and they
5 were able to do that.

6 So co-counsel contacted plaintiff's counsel that same
7 day to request the IME and identify Dr. Nace as the examiner in
8 accordance with the scheduling order, but because Dr. Nace's
9 wife was suffering from a life-threatening medical condition
10 which limited his availability, co-counsel wasn't at the time
11 able to give a date certain for the IME. Instead, inquired as
12 to the plaintiff's availability, when the plaintiff might be
13 available.

14 By the way, let me just say this -- and, again, we
15 weren't here yet -- but the expert, Dr. Nace, did assure that
16 despite his wife's condition at the time, he would be able to
17 meet the scheduling order. He assured co-counsel of that.

18 Two days later, on January 11, the plaintiff's counsel
19 sent co-counsel a letter objecting to the IME for three
20 reasons:

21 First, they didn't file -- co-counsel didn't file a
22 motion for an IME under Rule 35.

23 Second, the IME wasn't needed because the plaintiff
24 wasn't diagnosed with any "mental disorder or condition."

25 And, lastly, Dr. Nace wasn't qualified because he

N27QcarC

1 purportedly focused on drug addiction only.

2 As to the first claim, your Honor, pursuant to the
3 scheduling order, your Honor directed plaintiff to submit to an
4 IME upon request, so no motion in fact was needed.

5 As to the second claim, a diagnosis isn't needed as a
6 prerequisite for an IME. All that's needed is a claim of
7 emotional damages, which you have in abundance here.

8 Indeed, their expert, Dr. Liebowitz, diagnosed the
9 plaintiff with suffering from an ongoing trauma from the
10 alleged rape that was so severe that it significantly
11 diminished her quality of life, and her losses were profound
12 and enduring and lasted over 20 years.

13 THE COURT: I took the time to read your letter.

14 MR. TACOPINA: Okay.

15 THE COURT: It's not all that helpful for you to read
16 it back to me.

17 MR. TACOPINA: It's not the letter, but yes, you're
18 right.

19 So the bottom line is this: Those issues were
20 presented. That caused a back-and-forth because at that point
21 then, after the objection, instead of performing the
22 examination of the IME and complying with the schedule for the
23 report, what then happens is the objection then created this
24 delay.

25 On January 19, co-counsel responded to the objection

N27QcarC

1 letter explaining all the things we just discussed and
2 requested a meet-and-confer, which occurred on the 24th. On
3 the 24th, plaintiff's counsel wanted to know the precise amount
4 of time Dr. Nace would need to examine the plaintiff, and
5 co-counsel said a meaningful amount of time because, remember,
6 their expert, Dr. Liebowitz, had 22 hours with the plaintiff.

7 So anyway, that's when the issue happened. That's
8 again referenced in the letter. I'm not going to read the
9 letter. And I don't have the letter in front of me, your
10 Honor. But that's when the issue happened with Dr. Nace's wife
11 where she took a dramatic turn for the worse, had surgery, and
12 there was a risk of death, apparently.

13 THE COURT: Is that behind us now, or not?

14 MR. TACOPINA: She's here still, but there's some
15 severity. What Dr. Nace said to co-counsel, and I confirmed
16 that before we arrived here today, was that by February 28, he
17 would be able to do the IME and complete the report.

18 And as far as we know, that still stands correct.

19 MS. HABBA: Yes.

20 MR. TACOPINA: So that's one of the focal points of
21 this sort of scheduling issue.

22 I'm trying to see if there is anything else I need to
23 say. Your Honor, you read the letter. Dr. Nace's issue speaks
24 for itself. Obviously, since we've entered the case, we've
25 tried to come up with other options for experts to do this IME.

N27QcarC

1 Again, that's been one week. It's not been incredibly easy
2 because of our imposed -- not the Court's, but our imposed
3 timeline -- and we need them to drop everything and commence
4 immediately. But we are doing that. We are working toward
5 that.

6 But on the 25th, co-counsel reached out to plaintiff's
7 counsel to meet and confer regarding the extension of time to
8 complete discovery, and plaintiff's counsel said that they
9 basically by email, they'd give a slight extension but
10 indicated that, you know, their expert examined the plaintiff
11 for 22 hours, but we should forego -- this is not a personal
12 attack. I respect everyone at that table, by the way -- but we
13 should forego an expert examination of the plaintiff and just
14 rely on her three-hour deposition that covered not only
15 emotional damages but financial damages.

16 The obvious problem with that is that would give the
17 plaintiff an enormous unfair advantage in the eyes of a jury
18 because they would have an expert testifying who spent 22 hours
19 with the plaintiff and would testify to their findings based on
20 that. We would have an expert get up there and say "Never met
21 the plaintiff, I read a deposition, and here is my opinion."
22 You can imagine how that would play out in the eyes of a fact
23 finder. Sounds like their expert was prepared, spent time with
24 the plaintiff, and ours didn't. Just read some cold words on a
25 transcript. So anyway, that is sort of where we are at, I

N27QcarC

1 think.

2 Following that exchange was another meet-and-confer
3 that was contemplated for January 27, but that didn't happen
4 because co-counsel didn't have our expert yet, aside from
5 Dr. Nace and his delayed schedule, which was, again,
6 February 28.

7 So we are -- we, my firm, is coming in. We are
8 diligently trying to supplement Dr. Nace and find a backup
9 expert, and we're doing that on a daily basis. I have my
10 entire firm working on that. And we've spoken with several.
11 Dr. Nace again informs that he is available still to do this by
12 the 28th.

13 And sort of that's where we stand, your Honor. We are
14 looking -- I'm looking for --

15 THE COURT: To be precise, what you said before, if I
16 understood you correctly, was that he can do the IME and his
17 report by February 28, right?

18 MR. TACOPINA: Again, I -- yes. I've not spoken to
19 him. I looked over to co-counsel who just acknowledged yes,
20 so...

21 MS. HABBA: Yes, your Honor, that's our understanding
22 from Dr. Nace.

23 THE COURT: Thank you.

24 MR. TACOPINA: So that's where we're at, your Honor.

25 I don't think I need to then go into the issue of why

N27QcarC

1 the Carroll II case, the one I'm brought in to try, is
2 different than the first case because the whole issue of the
3 damages are completely -- completely different in that case.

4 The bottom line is, your Honor, I am looking for a
5 slight, a slight adjustment of the Court's schedule; not a
6 massive one, but a slight one. Some of them have to do with us
7 being competently prepared to try this case. This is a case
8 where the allegations happened, as we stand here now, like 27
9 years ago, around 27 years ago. I think there's a lot of work
10 for us to do to catch up to be ready to try this case. As I
11 asked, I asked for a six-week adjournment from the Court's
12 trial schedule. The first week of June we will be ready to go.
13 There will be nothing, come hell or high water, to prevent us
14 from doing that.

15 THE COURT: You know, I've heard that before.

16 MR. TACOPINA: Not from me you haven't. You and I
17 have tried a case before, your Honor. And I give you my word
18 here, with all those people behind us taking notes.

19 THE COURT: Mr. Tacopina, I understand you have been
20 before me. To say we have no issues is a vast understatement.
21 I have a lot of respect for you. I have a lot of respect --

22 MR. TACOPINA: Thank you.

23 THE COURT: -- for the folks at the front table too,
24 as you know. And but things keep happening in this case and
25 the cases involving your client, and I'd be fool not to take

N27QcarC

1 that into account too.

2 MR. TACOPINA: I understand, your Honor. All I can
3 tell you is this: I'm new to this foray.

4 THE COURT: It's not your first rodeo.

5 MR. TACOPINA: Not my first rodeo. It is my first
6 rodeo in this Saldome, if you will.

7 THE COURT: Okay. Yes.

8 MR. TACOPINA: But it's certainly, your Honor, I give
9 you my word. I will be ready to try this case. Look, I'll be
10 ready for this case. If you say April, I'm trying it in April.
11 I'm not running from this obligation.

12 THE COURT: I know that.

13 MR. TACOPINA: That was very magnanimous of me to tell
14 you that. But, your Honor, I'm asking just to be ready -- we
15 have an expert who is now going to spend some time with the
16 plaintiff, issue a report. I have to do some catch up. We do
17 have a trial schedule in May. Not your problem; mine. I have
18 a personal issue in April. Not your problem; mine. I can
19 relay it to the Court if you'd like. I'm asking for the first
20 week of June. I will not be anywhere but here to start the
21 trial in this case.

22 If you can't do it, your Honor, I understand. I'll be
23 ready whenever you want me to be ready. If you say start
24 tomorrow, I'll be ready, but I'm asking to be competent in this
25 case, to be completely prepared, and at least discharge my

N27QcarC

1 obligations. I'm asking if we could push the trial date over.

2 The IME schedule and everything else, February 28. I
3 think Ms. Kaplan in her letter yesterday suggested February 21
4 as the sort of date for the service of rebuttal for defendant's
5 psychological expert. I guess we're asking for a week past
6 that. And I'm just asking for the trial to start the first
7 week of June, if your Honor could accommodate for substantial
8 reasons.

9 THE COURT: Look, we've got fundamentally two
10 different -- I think different issues. One is the problem with
11 the expert. I understand what that's all about.

12 And the other is that you'd like more time to get
13 ready.

14 In the best of all possible worlds -- actually, maybe
15 a third issue, which is whatever personal issue you have. But
16 they're very different.

17 MR. TACOPINA: Yes.

18 THE COURT: Because two of those issues were on the
19 table when you agreed to come into this case. You came in to
20 an April 17 trial date knowing whatever your April schedule
21 was, and knowing that in the best of all possible worlds, all
22 lawyers want as much time as they can get to prepare for trial.
23 I did when I did it, and I understand that.

24 Let me hear from Ms. Kaplan, and we'll see where we
25 go.

N27QcarC

1 MS. HABBA: Your Honor, before Ms. Kaplan's rebuttal
2 to his argument, there is one other portion with Carroll I, if
3 you'd like me to speak to it first, and then she can address
4 them both, or we can, you know, bounce back and forth.

5 THE COURT: Have a seat, Ms. Kaplan.

6 MS. HABBA: Sorry. I thought I would raise it so
7 Robbie doesn't have to get up twice.

8 So, your Honor, thank you for hearing me as well. I
9 know it's burdensome having multiple firms on one case.

10 As far as Carroll II, we have not had any delays. My
11 firm has been on it and met all deadlines outside -- with
12 meet-and-confers working properly with co-counsel -- with
13 opposing counsel, and I think we've made headway through
14 several calls without getting court intervention. So,
15 respectfully, anybody saying otherwise would just be false.
16 This was filed November, end of November, as you know,
17 Carroll II, and there have not been any extensions.

18 The other issue I want to address on Carroll I, which,
19 again, I have not asked for any trial adjournments or
20 extension. I came into that case and had to argue in a week in
21 front of the Second Circuit, and did so on the Westfall Act, as
22 you know, which the Court stated that the former president was
23 an employee of the government. That, of course, decision
24 delayed things, but that was by no means counsel's intention to
25 move this along, and, quite honestly, as co-counsel has said,

N27QcarC

1 Mr. Tacopina, our client wants this behind him. He's very
2 confident that this will be behind him, and we would like to
3 get this trial over and done with.

4 I would like to echo the sentiments of Mr. Tacopina
5 because I do have firsthand knowledge on the issue of the
6 expert. He is telling us the 28th. It was a very serious
7 issue. Obviously, life happens. I again am happy to --

8 THE COURT: Can we get to Carroll I, which is what you
9 rose for.

10 MS. HABBA: Well, that's what I was going to say.
11 Happy to have on Carroll II a separate hearing, but I'm not
12 really sure on why we would be doing that. This is something
13 Mr. Tacopina and I have addressed.

14 Another issue with Carroll I is, as you know, we just
15 argued in January due to the Court's scheduling in Washington,
16 and are waiting for that decision. We can't deny that that is
17 also happening. We filed a motion to stay in the Southern
18 District of New York, and then opposing counsel agreed to a
19 stay pending the D.C. Court of Appeals decision. We're still
20 waiting on that, sir.

21 THE COURT: A stay of what?

22 MS. HABBA: A stay pending the decision from
23 Washington.

24 THE COURT: A stay of what?

25 MS. HABBA: Of this hearing. Of this case. So what

N27QcarC

1 happened was we had a meet-and-confer, your Honor, without
2 intervention from the Court. Ms. Kaplan agreed to push off --
3 it's true, is this not accurate? I'm sorry, Robbie is
4 disagreeing, and I'm happy to hear, but we had originally
5 decided that we were going to wait to argue in Washington on
6 the second issue, which was bounced by the Second Circuit. We
7 are still waiting on a decision on that.

8 THE COURT: I know that.

9 MS. HABBA: Right. So I just raise that to the Court
10 as we are still to this day waiting on that decision, which in
11 my estimation would be that they are going to bounce it back to
12 the Second Circuit, but that's just a guess from our
13 conversations in court that day. So I have to raise it on the
14 record. It's obviously --

15 THE COURT: They have to respond to the Second Circuit
16 one way or another.

17 MS. HABBA: Of course. I just wanted to raise to the
18 Court that we are still waiting on a decision from that bench.

19 THE COURT: I appreciate being informed of that.

20 MS. KAPLAN: Your Honor, I can be very brief.

21 What we just heard from Mr. Tacopina -- and I'm trying
22 to be as -- I'm trying to avoid any (indecipherable). What we
23 just heard from Mr. Tacopina is the meet-and-confer that should
24 have happened between counsel before we showed up in court.

25 I just heard for the first time that Dr. Nace is

N27QcarC

1 available in an email sent to us on January 25. They wrote,
2 "As such, we will not be able to proceed with Dr. Nace as the
3 defense psychiatric expert in this matter." If they told us on
4 Friday that Dr. Nace was available and he can do it by
5 February 28, we would have agreed to that. We implored them on
6 the call on Friday to offer us something short of a six-week
7 extension of all deadlines in all cases.

8 Second of all, with respect to the IME, I heard more
9 about what they think about the IME from Mr. Tacopina just now
10 than I have ever heard on a phone call from them. We're not
11 refusing to do the IME.

12 THE COURT: I'm sorry, you're what?

13 MS. KAPLAN: We're not refusing to offer our client
14 for an IME. We wanted to know how long they needed, what
15 tests, if any, they intended to run. It's not like examining
16 someone's knee. It's a different kind of examination, and
17 under the rules, we're entitled to understand what the timing
18 and the scope of the IME. And we've heard nothing from them
19 for all these weeks until I heard a little bit from
20 Mr. Tacopina.

21 Similarly, on Friday, if Mr. Tacopina had a personal
22 issue, he should have raised it with us. It's not appropriate
23 to have consultations like this among counsel before your
24 Honor. It's a waste of everyone's time.

25 So we obviously would object, your Honor, to any

N27QcarC

1 extension of the deadlines outside of the expert issue. With
2 respect to the expert issue, we have no trouble with
3 February 28 and could adjust the schedule accordingly just for
4 issues that relate to the expert psychiatric issue, but there's
5 a lot of other dates in the case that have nothing to do with
6 that. None of those dates should move, and we should be on
7 trial for April. Thank you, your Honor.

8 THE COURT: And you should be on trial when?

9 MS. KAPLAN: For April. April 17 as scheduled.

10 THE COURT: All right.

11 Is there anything confidential, Mr. Tacopina, about
12 whatever your personal issue with April is?

13 MR. TACOPINA: None whatsoever. And the reason it
14 wasn't raised with Ms. Kaplan in the meet-and-confer really is
15 not the overriding issue.

16 THE COURT: No, it's not, but I'd like to hear about
17 that.

18 MR. TACOPINA: No, here is the issue. I will be blunt
19 with you. My daughter, who lives in London, is about to have
20 her first child. It's my first grandchild, and I wanted to be
21 there on April 17 is the date that she is due, to be there for
22 the birth of my first grandchild, and my daughter's first baby.
23 That's it. Obviously, if you tell me to be here, I'll see some
24 pictures and some videos and do a Zoom call, and we'll be fine.
25 That wasn't the basis --

N27QcarC

1 THE COURT: Look, you have my good wishes about --

2 MR. TACOPINA: Thank you.

3 THE COURT: -- the forthcoming grandchild. We hope
4 everything goes well, and --

5 MR. TACOPINA: Your Honor, that wasn't the thrust of
6 the request. And it's a matter of weeks, not months, for the
7 adjournment, the trial. Weeks, not months. That's all I want
8 to point out. Dilatory tactics come in. Your Honor, I'd like
9 to try this in October. You've heard enough. I know.

10 THE COURT: I know enough about it.

11 MR. TACOPINA: I know. I know. I know.

12 THE COURT: Anything else, Ms. Kaplan?

13 MS. KAPLAN: Not from us, your Honor.

14 THE COURT: All right. So far as the contretemps of
15 this morning, I will let you know what I decide soon.

16 What do we estimate for the duration of the trial?

17 MS. KAPLAN: Sometime between five days and ten days,
18 I'm not exactly sure where, but probably closer to five is my
19 guess. There are not that many witnesses, your Honor.

20 THE COURT: Mr. Tacopina?

21 MR. TACOPINA: Sounds about right to me. I wouldn't
22 imagine it would be longer than that at all.

23 THE COURT: All right. Based on my experience not too
24 long ago in another comparable case, the estimates sound more
25 or less right. All right. I will let you know about that.

N27QcarC

1 Now, I, of course, am extremely well aware of the
2 pendency of the Carroll I case in the District of Columbia
3 Court of Appeals. We are just all going to have to wait. That
4 case is trial ready, if there is to be a trial. Whether we try
5 it, assuming there is going to be a trial, jointly with this or
6 not, I haven't decided yet. We will see what happens.
7 Preparation for that ought to be basically done. And so I
8 don't think I have to decide now. And I won't.

9 I don't think I'd be giving away a state secret to say
10 I listened to the argument, watched the argument, I think, at
11 some later date in the D.C. Court of Appeals, and I think it's
12 anybody's guess what they're going to do. And we'll leave it
13 at that.

14 You'll hear from me. Thank you.

15 (Adjourned)